

# House Study Bill 77

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act enhancing the penalty for certain domestic abuse assault  
2 cases and providing a penalty.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1429DP 83  
5 jm/rj/14

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1 1 Section 1. Section 236.12, subsection 2, Code 2009, is  
1 2 amended by adding the following new paragraphs:  
1 3 NEW PARAGRAPH. e. Except as otherwise provided in  
1 4 subsection 3, a peace officer shall, with or without a  
1 5 warrant, arrest a person under section 708.2A, subsection 2,  
1 6 paragraph "d", if, upon investigation, including a reasonable  
1 7 inquiry of the alleged victim and other witnesses, if any, the  
1 8 officer has probable cause to believe that a domestic abuse  
1 9 assault has been committed by knowingly impeding the normal  
1 10 breathing or circulation of the blood of another by applying  
1 11 pressure to the throat or neck of the other person regardless  
1 12 of whether injury results.

1 13 NEW PARAGRAPH. f. Except as otherwise provided in  
1 14 subsection 3, a peace officer shall, with or without a  
1 15 warrant, arrest a person under section 708.2A, subsection 2,  
1 16 paragraph "d", if, upon investigation, including a reasonable  
1 17 inquiry of the alleged victim and other witnesses, if any, the  
1 18 officer has probable cause to believe that a domestic abuse  
1 19 assault has been committed by obstructing the nose or mouth of  
1 20 the other person regardless of whether injury results.

1 21 Sec. 2. Section 236.12, subsection 3, Code 2009, is  
1 22 amended to read as follows:

1 23 3. As described in subsection 2, paragraph "b", "c", ~~or~~  
1 24 "d", "e", or "f", the peace officer shall arrest the person  
1 25 whom the peace officer believes to be the primary physical  
1 26 aggressor. The duty of the officer to arrest extends only to  
1 27 those persons involved who are believed to have committed an  
1 28 assault. Persons acting with justification, as defined in  
1 29 section 704.3, are not subject to mandatory arrest. In  
1 30 identifying the primary physical aggressor, a peace officer  
1 31 shall consider the need to protect victims of domestic abuse,  
1 32 the relative degree of injury or fear inflicted on the persons  
1 33 involved, and any history of domestic abuse between the  
1 34 persons involved. A peace officer's identification of the  
1 35 primary physical aggressor shall not be based on the consent  
2 1 of the victim to any subsequent prosecution or on the  
2 2 relationship of the persons involved in the incident, and  
2 3 shall not be based solely upon the absence of visible  
2 4 indications of injury or impairment.

2 5 Sec. 3. Section 708.2A, subsection 2, Code 2009, is  
2 6 amended by adding the following new paragraph:

2 7 NEW PARAGRAPH. d. A class "D" felony, if the domestic  
2 8 abuse assault is committed by knowingly impeding the normal  
2 9 breathing or circulation of the blood of another by applying  
2 10 pressure to the throat or neck of the other person or by  
2 11 obstructing the nose or mouth of the other person, regardless  
2 12 of whether injury results.

2 13 Sec. 4. Section 708.2A, subsection 6, paragraph b, Code  
2 14 2009, is amended to read as follows:

2 15 b. A person convicted of violating subsection 2, paragraph  
2 16 "d", or subsection 4 shall be sentenced as provided under  
2 17 section 902.9, subsection 5, and shall be denied parole or  
2 18 work release until the person has served a minimum of one year  
2 19 of the person's sentence. Notwithstanding section 901.5,

2 20 subsections 1, 3, and 5 and section 907.3, the person cannot  
2 21 receive a suspended or deferred sentence or a deferred  
2 22 judgment; however, the person sentenced shall receive credit  
2 23 for any time the person was confined in a jail or detention  
2 24 facility following arrest.

2 25 EXPLANATION

2 26 This bill enhances the penalty for certain domestic abuse  
2 27 assault cases. The bill provides that a person commits a  
2 28 class "D" felony if the person commits domestic abuse assault  
2 29 by knowingly impeding the normal breathing or circulation of  
2 30 the blood of another by applying pressure to the throat or  
2 31 neck of the other person, or by obstructing the nose or mouth  
2 32 of the other person, regardless of whether injury results.

2 33 The bill also provides that a peace officer shall arrest  
2 34 the person performing acts which violate the bill and whom the  
2 35 peace officer believes to be the primary physical aggressor  
3 1 just as in other domestic abuse assault situations.

3 2 A person shall be sentenced to a class "D" felony for a  
3 3 first offense violation of the bill. Current law provides  
3 4 that a person who commits a third or subsequent offense of  
3 5 domestic abuse assault commits a class "D" felony.

3 6 In addition, a person who violates the bill shall be denied  
3 7 parole or work release until the person has served a minimum  
3 8 of one year of the person's sentence, and is not eligible to  
3 9 receive a deferred judgment, deferred sentence, or suspended  
3 10 sentence. Current law also provides that a person convicted  
3 11 of a third or subsequent domestic abuse assault classified as  
3 12 a class "D" felony shall be denied parole or work release  
3 13 until the person has served a minimum of one year of the  
3 14 person's sentence, and is not eligible to receive a deferred  
3 15 judgment, deferred sentence, or suspended sentence.

3 16 A class "D" felony is punishable by confinement for no more  
3 17 than five years and a fine of at least \$750 but not more than  
3 18 \$7,500.

3 19 LSB 1429DP 83

3 20 jm/rj/14.1